Hobbes and Locke: The Social Contract in English Political Philosophy

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HOBBES AND LOCKE: THE SOCIAL CONTRACT IN ENGLISH POLITICAL PHILOSOPHY.[1]

[*Contributed by* SIR FREDERICK POLLOCK, BART.]

Rudimentary stages of Social Contract.—From very early times we find in various forms the notion that all government and society depend in some sense on the consent the governed. In the fragments of Cicero's treatise on the Republic (better, in English, Commonwealth) there is a definition which had great authority in the Middle Ages:

> Populum autem non omnem coetum multitudinis sed coetum iuris consensu et utilitatis communione sociatum esse.
>
> Not every multitude of men gathered together is a nation, but only such as have agreed to live by common lawful rule for the common advantage.

Augustine refused to accept this on the ground that there could be no true law or justice under a heathen government; but he seems to have been singular in his dissent. Isidore of Seville, in the early seventh century, substantially copied the Ciceronian definition, and it was generally accepted.

Renaissance controversies.—But it was a long time before any one attempted to work out a definite doctrine; indeed it was not possible before the twelfth century, when the revival of learning sometimes called the lesser Renaissance furnished the materials, and a motive was given by the problem, now becoming acute, of the relations between Church and State. At the time of the later Renaissance in the sixteenth century the problems were more acute and much more complex, because (1) practically no one could identify the State with the Holy Roman Empire: (2) the Reformers, still zealous for ecclesiastical authority, repudiated the authority of the Roman church. Thus, at the date of Hobbes's birth (1588) experiments had been made by reforming and anti-reforming publicists with almost every possible speculative combination.

Several questions present themselves:

Who are the contracting parties? on what do they agree? how is the agreement binding? what was their condition before they agreed?

We have to note that there are two quite distinct types of assumed contract. You may suppose an agreement to form a political society—a covenant of commonwealth, *pactum unionis*: this does not necessarily com-

[1] Revised notes of an University Extension lecture delivered at Oxford in 1907.

prise the definition of any form of government or the choice of governors. You may also suppose an agreement to establish a particular form of government and bear faith to it; and this may comprise a mutual agreement between rulers and subjects. This is a covenant of allegiance, *pactum subiectionis.*

Strictly the term *social contract* is applicable only to the former type: but it is impossible to consider the one apart from the other either dogmatically or historically: the distinction between them is important but easily overlooked.

Types of theory: one contract or two?—It is possible to construct political theories requiring one of these types of agreement, or both.

In the first half of the seventeenth century the prevailing view was that there were *two* contracts—of society and of allegiance: and that the latter was a contract of mutual obligation, a bilateral contract as modern lawyers say, between subjects and rulers—a contract therefore which either prince or people might break.

Historical illustrations were not wanting for either kind of contract. Formal compacts between kings and their subjects were common enough in the Middle Ages, and long before Magna Carta:[1] and in 1620, when Hobbes was still a young man, the Pilgrim Fathers did "solemnly and mutually covenant and combine" themselves "together into a civil body politick" and "promise all due obedience and submission" to "such just and equal laws," etc., as they should make. This of course throws no light on the origin of government, as the subscribing parties were already members of a civilised State and expressly described themselves as loyal subjects of King James I.

But history did not count for very much with the sixteenth and seventeenth century controversialists except as a storehouse of examples to be used in support of foregone conclusions. They assumed[2] that contract was the most binding form of obligation, and therefore it must be the proper foundation of the Commonwealth, in analysis and in morals if not in historical fact.

There was room for plenty of controversy within these limits, especially as to the contract of allegiance.

Did the people surrender their power to the prince, or only commit it to him on terms? and on what terms, if any?

Did the people delegate their authority to the prince, or only appoint him as a ministerial officer?

Did the people act as a corporate body, so that the agreement was between the People of the one part and the King (or other governor or governors) of the other part?

[1] Mr. A. J. Carlyle, *Mediaeval Political Theory in the West*, gives Frankish examples of the ninth century.

[2] Locke, *Civ. Gov.* § 195: Grants, Promises, and Oaths, are Bonds that hold the Almighty.

This last is a question which Hobbes met with the most emphatic negative.

Hobbes and Locke compared.—Comparison of Hobbes's and Locke's theoretical construction of the body politic will show that Hobbes's doctrine was revolutionary, while Locke worked, in the main, on accepted lines and was anxious to appear as following respectable authority. This was perhaps one reason why Locke's influence on the political thought of the next century was so much greater.

Both Hobbes and Locke start from an assumed "state of nature"—a political blank paper. In this they are in no way singular. Observe that their predecessors, being bound to accept the theological doctrine of the fall of man, did not and could not treat the "state of nature" as a golden age. It was the condition of men as fallen, sinful, ignorant and ungoverned creatures. Any virtues it had were negative. Hobbes and Locke, again, are at one in considering the original multitude as a crowd of unrelated individuals: and this is the fundamental fallacy of the Social Contract in every form.

Hobbes's view of "mere nature" is pessimist enough to satisfy any theologian. Without "a common power to keep them all in awe" men "are in that condition which is called war; and such a war as is of every man against every man": and thus there is no security for any life worth living.[1]

The law of nature[2]—*i.e.* the rule of self-preservation dictated by natural reason—dictates to man "to seek peace and follow it," and for that purpose, among other things, to keep faith.

But the law of nature has no adequate sanction.[3] "Covenants without the sword are but words, and of no strength to secure a man at all." From what sort of agreement shall the requisite "common power" be derived?

Hobbes's Original Contract.—The peculiar and fundamental point of Hobbes's construction is the form of his original contract.

There is only one contract: it is a contract of allegiance made not between ruler and subjects, but between those only who agree to transfer all their natural right to the ruler or rulers whom they will henceforth obey. The sovereign thus instituted (not necessarily one person, but in any case bearing the person of the commonwealth) is not a party to the covenant. He promises nothing to the subjects, and is bound only by the law of nature to exercise his power reasonably. His right is derived not from any promise made to him, but from the power conferred upon

[1] Lev. i. 13.

[2] The relation of Hobbes's law of nature to the law of nature as accepted by medieval teachers from Greek or Græco-Roman philosophy and Roman law cannot be considered here. Every one admitted however that there was a law of nature consisting of rules of conduct binding on men simply as rational beings, that it was ascertainable, and that when ascertained it was supreme: except that after the Reformation some Protestant controversialists put the letter of Scripture first under the name of the law of God. Why did they not say at once that they knew as much about the law of nature as the Pope? Because they were still thinking medievally, and wanted a show of superior authority.

[3] Lev. i. c. 17 init.

him. Hence there can be no legal limitation of sovereignty, and to talk of a limited or mixed government comes only of confused thinking.[1]

This single original contract must be classed as *pactum subiectionis* rather than *pactum unionis*.

Hobbes, of course, did not lay down this doctrine merely for the pleasure of speculation. He had a very practical object—to prove that Charles I. was of right and in fact an absolute king. The detailed application is to be found in "Behemoth." Also the practical motive for his conclusions—not only avowed but insisted on—was the conviction that anarchy is necessarily the worst of evils, and any settled form of government, however bad, much better than a revolution.

Locke's Social Contract.—Locke, forty years later, started with a very different practical purpose. Hobbes was the accuser of the Long Parliament, Locke the defender of the Convention Parliament.

Hobbes argued strenuously for absolute power. Locke was abundantly cautious to avoid making any statement or admission which might lead to the inference of absolute power anywhere.

For Locke the state of nature is not a state of war until there is actual hostility, but only a state in which peace is not secure. The natural law of self-preservation includes a moral duty to preserve the rest of mankind so far as possible (Essay, ii. § 6). The natural power of every man has already a moral and even judicial character. Locke is therefore not an unqualified individualist like Hobbes.

Civil society is formed by every man giving up his natural power; not to a sovereign but "into the hands of the Community" or "to the publick." The authority so conferred upon the society is granted only to be used for the public good (vii. § 87).

The next step is that the society, being formed, establishes a government with legislative and executive organs by the decision of the majority. The right of the majority is founded simply on the necessity of the case, because otherwise no collective action would be possible (viii. § 96).

Locke does not say in terms whether he regards this as involving a secondary contract or covenant of allegiance (*pactum subiectionis*), and it is difficult to make out exactly what his formal conception was. It would rather seem that he purposely avoids committing himself. On the whole I submit that he does postulate an auxiliary compact of all the citizens to be bound by the government and laws which the society shall establish (viii. § 122). This compact is not made once for all, but is constantly renewed in the person of every man who becomes a subject and member of the commonwealth by promising allegiance.

[1] Hence, the sovereign not being bound by law, no one law can be more fundamental than another. *Quaere*, what would Hobbes have made of the constitution of the United States, or Switzerland, or Belgium? The attempts of modern followers of Hobbes to account for "rigid" constitutions have been signal failures.

Locke's view that permanent citizenship depends wholly on the individual's consent—and even express consent—is both unhistorical and contrary to all legal doctrine, as any instructed modern reader will easily perceive.

The persons appointed to exercise legislative and executive authority are of course parties to the contract as citizens. But Locke does not affirm, and he seems by implication to deny, the existence of any further special contract between governors or officers of state, as such, and the commonwealth: and this, although the supposed original contract between king and people had been prominent in the debates on the conduct of King James II. and its consequences. Not that Locke would deny that a king or any other holder of public office was bound by any special oath of office or other express undertaking given by him on his appointment and admission. But in a general way he regards the powers of government not as depending on contract, but as held under a conditional grant, or in trust, from the Commonwealth, and subject to forfeiture if the conditions are not observed. Here we have to note the influence of ideas derived from the English law of property. The fundamental condition is that power so granted is to be used in good faith for the common advantage. Locke's development of this into a sort of constitutional code, in which especially the sanctity of property is elaborately guarded against encroachment by the State, is interesting, but we cannot now dwell on it.

The path towards Rousseau.—Thus Locke may be said to prepare the way for Rousseau. Hobbes knew of only one social contract, the covenant of allegiance: civil society is constituted by allegiance to the common power alone. Locke holds (as I read him) that there is a primary covenant of commonwealth and also an auxiliary covenant of allegiance: but the chosen rulers are not, as rulers, parties to that second covenant. Rousseau, with great ingenuity, quitted Locke's lines and framed a theory which may almost be called an inversion of Hobbes's. He abolished the covenant of allegiance altogether, as being superfluous. There is only one contract, the covenant of commonwealth: for the commonwealth which it creates is sovereign, and whatever the commonwealth does is an act of sovereignty needing no farther confirmation. Thus Hobbes recognises *pactum subiectionis* only; Locke (seemingly) both *pactum unionis* and *pactum subiectionis;* Rousseau *pactum unionis* only.

Later British publicists.—Hume had in fact refuted the Social Contract before Rousseau's version of it became known: a version which though more brilliant is no more sound than any other. But this had apparently no effect in checking Rousseau's influence in France: nor did it prevent Locke's political theory, which had become part of the regular Whig tenets, from being generally accepted in England till the end of the eighteenth century.

Blackstone, while obviously under Locke's influence, repudiated, as matter of fact, both the existence of a state of nature, and the formation

of society by "any convention of individuals": thus putting himself to some extent in the right line of criticism. It is very doubtful however whether any of the expounders of a social contract meant to commit themselves to maintaining that states were normally, or ever, created in historical times by an express act of agreement: Locke is interesting and rather peculiar on this point. The doctrine of the Social Contract in all its forms is analytical, not historical.

Hume showed that even as mere analysis the doctrine is useless.[1] It attempts to found political society on the duty of keeping promises. But no reason can be given for keeping the supposed promise of the social compact, or any promise, which is not an equally good reason for maintaining political society and obeying the law, promise or no promise. We have to fall back on "the apparent interests and necessities of human society."

Bentham was fully convinced by Hume's argument, and adopted it in his Fragment on Government (1776). The Social Contract, therefore, has no place in the politics of the English utilitarian school.

Burke in his Reflections on the French Revolution and elsewhere treats it as an absurd and contemptible fiction. I am not aware of any serious attempt to revive it in later times.

[1] Essay xii., of the Original Contract.